

**DURHAM, NORTH CAROLINA
MONDAY, AUGUST 18, 2008
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the pledge of allegiance led by Council Member Clement.

Mayor Bell announced that Thomas J. Bonfield was officially sworn in on August 11, 2008; however, since this was his first City Council Meeting, the Mayor swore in Thomas J. Bonfield as the new City Manager.

City Manager Bonfield expressed his appreciation of thanks to the Mayor and the members of the City Council for the opportunity to serve the City of Durham as the City Manager. He made comments on his career in public service, stated how seriously he takes the public trust and that related responsibilities that accompany the position of City Manager, and recited the Athenian Oath as his commitment to public service.

Mayor Bell read a proclamation declaring September 2008 as Alcohol and Drug Addiction Recovery Month which was presented to Robert Robinson, Deputy Director of The Durham Center who extended an invitation to everyone to attend the Recovery Celebration Block Party scheduled for September 12, 2008. Also, the Mayor presented a certificate of appreciation to Parks & Recreation Director Rhonda Parker and Sarah Hogan on behalf of the Durham Sluggers Beep ball Team for winning the North Carolina/South Carolina Beep Ball Tournament held July 25-26, 2008. Sarah Hogan of the Parks & Recreation Department made comments on this tournament.

Mayor Pro Tempore Cole-McFadden recognized Maya Bryant who was crowned Miss Pre-Teen North Carolina, Chad Bullock - Teen Choice Award Winner of \$100,000 for his work with Tobacco Free Kids Youth Advocacy Program, Jaquetta Cherry 2nd runner up for the Southern Growth Policies Board Video contest, and Sydney Brunson – 2007 Campaign for Tobacco Free Kids National Group winners.

Council Member Woodard recognized boy scouts from Troop 439 who were in attendance working on their citizenship and community merit badge, congratulated Chief Bruce Pagan and the Fire Department on their Bi-Annual Awards Banquet and recognized the staff of the Carolina Theatre for their participation during the 13th Annual Gay and Lesbian Film Festival.

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Council Member Clement commended the Durham Police Department and the communities who participated in National Night Out.

Mayor Pro Tempore Cole-McFadden requested a moment of silence in memory of City employee Tiawana Parker Harding.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Thomas J. Bonfield requested that Agenda Items 14 [State Treasurer's Local Government Other Post Employment Benefits [OPEB] Fund] and 34 [Unified Development Ordinance (UDO) Text Amendment – Conservation Subdivisions] be referred back to the administration and stated two supplemental items have been added to the agenda.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to accept the City Manager's priority items was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

For clarification on Agenda Item 25 [Public Hearing--Proposed Minimum Nonresidential Building Code and Recent Modification of Minimum Housing Code], City Attorney Patrick Baker advised Council that they would not be adopting the new minimum non-residential building code. He read the following motions that Council should take action on: To conduct a public hearing to receive public comments on the proposed minimum Nonresidential Building Code and to readopt the amendments to the Minimum Housing Code that were adopted May 2008.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to accept the City Attorney's priority item was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

There were no priority items from the City Clerk.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. No items were pulled from the Consent Agenda.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve the Consent Agenda was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

[CONSENT AGENDA]

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**SUBJECT: WORKFORCE DEVELOPMENT BOARD - RECEIPT AND
ACCEPTANCE OF AN APPLICATION AND APPOINTMENT**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive and accept an application and to appoint Michael Johnston Goodmon to the Workforce Development Board to represent Private Sector as recommended by the Durham Chamber of Commerce with the term to expire on June 30, 2010 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: PASSENGER VEHICLE FOR HIRE COMMISSION - REAPPOINTMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to reappoint Hatim M. Elzubair to the Passenger Vehicle for Hire Commission with the term to expire on January 1, 2010 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: RECREATION ADVISORY COMMISSION - REAPPOINTMENTS

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to reappoint Don Moushon, Umar Muhammad and Linwood Webster to the Recreation Advisory Commission with terms to expire on August 8, 2011 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: CITIZENS ADVISORY COMMITTEE - APPOINTMENTS

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to appoint Robert Buchanan (term expires June 30, 2011), Clarisa Laverne Grady (term expires June 30, 2010) and SaDonna Wiggins (term expires June 30, 2010) to the Citizens Advisory Committee was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM AREA TRANSIT AUTHORITY - APPOINTMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to appoint Arylla "Patrice" Proctor to the Durham Area Transit Authority as an Alternate Member with the term to expire on March 1, 2009 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

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**SUBJECT: MAYOR'S NOMINEE FOR APPOINTMENT - RECREATION
ADVISORY COMMISSION**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to appoint Omar S. Beasley as Mayor's appointee to the Recreation Advisory Commission with the term to expire on August 8, 2009 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM CIVIC CENTER AUTHORITY - APPOINTMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to appoint Rosemarie Kitchin to the Durham Civic Center Authority with the term to expire on July 31, 2011 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: CITIZENS ADVISORY COMMITTEE - RECEIPT AND ACCEPTANCE
OF AN APPLICATION**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive and accept an application for a citizen to fill one (1) vacancy on the Citizens Advisory Committee with the term to expire on June 30, 2011 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: STREET CLOSING - A 105.10 LINEAR FOOT UNNAMED ALLEY OFF
EAST CLUB BOULEVARD (SC0800011)**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt a resolution setting a public hearing on September 15, 2008 on the proposed closing of a 105.10 linear foot unnamed alley off East Club Boulevard was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Resolution #9596

**SUBJECT: STREET CLOSING - A 0.111 ACRE PORTION OF WATKINS ROAD
(SC07-05)**

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt a resolution setting a public hearing on September 15, 2008 on the proposed closing of a 0.111 acre portion of Watkins Road was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Resolution #9597

**SUBJECT: SETTING PUBLIC HEARING TO CONSIDER ORDERING
IMPROVEMENT UNDER ENABLING ACT AUTHORITY - WATER
MAIN ON ED COOK ROAD**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt a resolution setting a public hearing on September 2, 2008 for a Water Main on Ed Cook Road from Hickory Nut Drive to South Property Line of PIN 0739-02-79-0975 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: SETTING PUBLIC HEARING TO CONSIDER ORDERING
PETITIONED IMPROVEMENT - WATER MAIN ON STALLINGS ROAD**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to accept a Certificate of Sufficiency from the Manager of Engineering and Stormwater for the following petition; and

To adopt a resolution setting a public hearing for September 2, 2008, to consider ordering the following improvement was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Water Main on Stallings Road from Mineral Springs Road to South Property Line of PIN 0851-02-98-0871

**SUBJECT: MORTGAGE LOAN SERVICING CONTRACT – AMERINATIONAL
COMMUNITY SERVICES, INC.**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the expenditure of Bond funds in an amount not to exceed \$320,000.00 to AmeriNational Community Services, Inc. for loan servicing;

To approve the review committee's recommendation to select AmeriNational Community Services, Inc. as the DCD's servicing agent;

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To authorize the City Manager to execute a Service Agreement with AmeriNational Community Services, Inc. for mortgage loan servicing; and

To authorize the City Manager to make changes to the contract that do not increase the contract amount, lessen the contractor's duties, or extend the term beyond October 31, 2011; and

To adopt an Ordinance Amending the General Capital Improvement Project Ordinance, Fiscal Year 2009, as amended, the same being Ordinance 13632 for the purpose of a service agreement and no change in the total appropriations and revenues was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13674

**SUBJECT: STATE TREASURER'S LOCAL GOVERNMENT OTHER POST
EMPLOYMENT BENEFITS (OPEB) FUND**

To adopt a Resolution Authorizing the Establishment of an Investment Account and Short Term Investment Fund (STIF) through the State Treasurer and the execution of the State Treasurer's Contribution Agreement.

Note: The City Manager requested that this item be referred back to the administration – Finance Department.

**SUBJECT: CONTRACT FOR INSTALLATION OF TRAFFIC SIGNAL WITH MAST
ARMS AT BROAD STREET AT STADIUM DRIVE - FULCHER
ELECTRIC OF FAYETTEVILLE, INC.**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a contract with Fulcher Electric of Fayetteville, Inc. in the amount of \$106,283.50 for the installation of a traffic signal with mast arms at Broad Street at Stadium Drive;

To establish a project contingency fund in the amount of \$10,628.35; and

To authorize the City Manager to negotiate change orders to the project provided the cost of all change orders does not exceed \$10,628.35 and the total project cost does not exceed \$116,911.85 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: SUPPLEMENTAL AGREEMENT NO. 3 FOR THE REMOVAL AND
REPLACEMENT OF THE EXISTING PEDESTRIAN BRIDGE**

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CROSSING OVER THE DURHAM FREEWAY (NC 147) AT ALSTON AVENUE PROJECT U – NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a Supplemental Agreement No. 3 between the North Carolina Department of Transportation (NCDOT) and the City of Durham to amend North Carolina Department of Transportation Agreement U-4445 providing a 20% match or \$200,000.00 for the Direct Attributable funds authorized was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH PERIMETER DEVELOPERS, LLC - CLAREMONT ACRES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to enter into a water and sewer extension agreement with Perimeter Developers, LLC to serve Claremont acres; and

To authorize the City Manager to modify the contract prior to execution provided that such modifications do not increase the dollar amount of the contract and do not significantly decrease the obligations of the contractor was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR THE DESIGN AND CONSTRUCTION ADMINISTRATION OF THE AMERICAN TOBACCO TRAIL PHASE E - PB AMERICAS, INCORPORATED

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a Supplemental On-Call Agreement with PB Americas, Incorporated in an amount not to exceed \$1,650,000.00 for the Design and Construction Administration of the American Tobacco Trail Phase E; and

To authorize the City Manager to modify the agreement prior to execution provided that such modifications do not increase the dollar amount of the agreement and do not significantly decrease the obligations of the agreement was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

SUBJECT: CONTRACT SR-49 CURED-IN-PLACE (CIPP) INSTALLATION AND MANHOLE REHABILITATION - INSITUFORM TECHNOLOGIES, INC.

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a contract with Insituform Technologies, Inc. for construction services for the SR-49, CIPP Installation and Manhole Rehabilitation Project in the amount not to exceed 2,685,400.00;

To establish a contingency fund for the contract in the amount not to exceed \$537,080.00;

To authorize the City Manager to negotiate change orders for the contract provided that the cost of all change orders does not exceed 537,080.00, and the total project cost of \$3,222,480.00; and

To authorize the City Manager to modify the contract before execution, provided the modifications do not increase the dollar amount of the contract and is consistent with the general intent of the version of the Contract approved by City Council was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

The City Council disposed of the following agenda items at the August 7, 2008 Work Session:

18. Report to Council Concerning Shuttles and Taxicabs

To receive a report concerning the regulation and enforcement of shuttle vehicles, and determine whether the administration should begin preparing ordinance amendments and resource allocations necessary to establish and enforce shuttle vehicle operator, driver and vehicle standards similar to those currently in force for taxicabs.

(This item was referred back to the Administration – Public Works Dept.)

21. Mini Assessment Roll for Curb, Gutter and Paving on Beebe Drive from Barbee Road to West Property Line of Tax Map 517-1-12A

To reconsider the assessment against the property of Jennifer L. Cole Preston, identified as 805 Beebe Drive, PIN 0729-04-64-6951; and

To find that the property has benefited from the curb, gutter and paving improvement and to confirm the assessment in the amount of \$4,000.00 (grants partial relief in accordance with the Assessment Relief Policy)

(This item was referred back to the Administration – Public Works Dept.)

22. Mini Assessment Roll for Water and Sewer Laterals on Beebe Drive from Barbee Road to West Property Line of Tax Map 517-1-12A

To reconsider the assessment against the property of Jennifer L. Cole Preston, identified as 805 Beebe Drive, PIN 0729-04-64-6951; and

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To find that the property has not benefited from the water lateral improvement at this time and to relieve the assessment in the amount of \$670.00 with the provision that a future lateral charge will be due and payable at the prevailing rate should the property connect to City water (in accordance with the Assessment Relief Policy).

(This item was referred back to the Administration – Public Works Dept.)

35. Harold L. Noell

To receive comments from Harold Noell regarding property crime and vacant houses.

(Citizen did not appear at the 08-07-08 Work Session per Citizens' request)

36. The Citizens of Durham

To receive comments from Randy Pickle concerning Our Dead "Green" Infrastructure: Our Parks in Peril.

(Comments were received at the 08-07-08 Work Session)

37. New East Durham Community

To receive comments from Vivian McCoy concerning the paving of Harvard Avenue.

(Comments were received at the 08-07-08 Work Session)

38. Durham's Comprehensive Anti-Gang Initiative

To receive an update on the Comprehensive Anti-Gang Initiative.

(A presentation was received at the 08-07-08 Work Session)

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

**SUBJECT: MINI ASSESSMENT ROLL FOR CURB, GUTTER AND PAVING ON
CASTLEROCK DRIVE FROM NC HWY 55 TO END OF CUL-DE-SAC**

To find that the property of Shelton C. and Shirley T. Herbin, Jr., identified as 112 Castlerock Drive, PIN 0739-01-37-8400, has benefited from the curb, gutter and paving improvement and to confirm the assessment in the original amount of \$2,000.00.

Engineering Manager Ed Venable made comments on this item for a mini assessment roll for improvements that have been constructed.

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Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Clement seconded by Council Member Woodard to find that the property of Shelton C. and Shirley T. Herbin, Jr., identified as 112 Castlerock Drive, PIN 0739-01-37-8400, has benefited from the curb, gutter and paving improvement and to confirm the assessment in the original amount of \$2,000.00 was approved at 7:32 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: VOLUNTARY ANNEXATION OF THE DOC NICHOLS PROPERTY –
FY2007-13**

To receive citizens' comments concerning the voluntary annexation of the Doc Nichols Property.

To adopt “An Ordinance Annexing to the City of Durham” the Voluntary Annexation Area “Doc Nichols” in accordance with N.C. General Statutes 160A-58 effective from and after September 30, 2008; and

To authorize the City Manager to enter into a half base contract with Bethesda Volunteer Fire Department.

Budget Director Bertha Johnson stated at the request of the City Council, this voluntary annexation public hearing was continued from the June 2, 2008 City Council Meeting.

Mayor Bell opened the public hearing.

Proponent

Ron Horvath, of Horvath & Associates, raised concern with the message that is being sent to the community of investors whether they be commercial, residential, industrial, job based or non job based [that if you invest money in Durham, go through two to three years of public hearings, follow the rules and submit for voluntary annexation] a neighbor can stand up and ask that it all be taken away. He stated the area in question [Doc Nichols] went through three public hearings. He stated at the public hearing held by the county commissioners in 2007 they also approved the site plan for Doc Nichols. Mr. Horvath stated construction drawings have been underway for some time and the city council approved the extension agreement in March of 2008 for utility services and part of the extension agreement was to request voluntary annexation. He asked the council to approve the annexation request.

Opponent

Tina Motley-Pearson asked if there had been any environmental studies done.

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City/County Planning Director Steve Medlin stated the application has been evaluated that was submitted and found to be in compliance. He stated there has been no full environmental impact analysis done on this project and there is no requirement under the Unified Development Ordinance for that to occur.

Tina Motley-Pearson asked Mr. Medlin what process was done.

Mr. Medlin stated there are no standards in the Unified Development Ordinance that would establish the criteria or need for that information.

Tina Motley-Pearson voiced concern with the soil erosion in the area, Sierra having steep slopes and the streams on Sierra going to Lake Creek which is impaired as well as Falls Lake. She stated in 2009 the Jordan Lake rules will come into effect. She stated the general permit #29 submitted by Sierra was permitted by default and this is a 401 water quality and evaluations should have been done for this. Ms. Motley-Pearson referenced the planning staff's concern of some legal action by the applicant if something was rejected at this stage. She stated she was not totally against the development; however, she wanted to make certain it was done right. She spoke on the City of Durham stepping up to protect its own watershed for Lake Michie and Durham's Watershed Protection Ordinance initiating the water protection laws for the state. Ms. Motley-Pearson stated even though Mr. Horvath has responsibilities to his stakeholders to maximum profits, Durham has the responsibility to protect the natural resources and the citizens. She asked the council to send these plans back to the county. Ms. Motley-Pearson stated they would like bigger stream buffers, less impervious surface and no nitrogen buydowns.

Mayor Bell asked if there were any questions for the opponent.

Proponent

Ron Horvath stated Durham has been a leader in water quality standards in the state. He stated the standards in the Jordan, Neuse River basins and including Lake Michie are more strict than the state requires, more strict than what Raleigh or Wake County require within their jurisdictions. He stated their buffers are wider than the state already [the state mandates a minimum 50 foot and Durham requires 100 foot if you go high density option]. He commented on the Army Core of Engineers approval which did reach a statutory limitation and noted the plan was reviewed and no issues were found. He stated they had to submit a DWQ and they have addressed their comments. Mr. Horvath stated they are an environmentally concerned designer/developer and they have followed all the rules plus some.

Mayor Bell closed the public hearing.

Mayor Bell stated he was not aware of discussions about a lawsuit and asked staff to respond.

City/County Planning Director Steve Medlin stated there was a meeting last week with representatives from the Board of County Commissioners, members of staff and other interested parties, and at that meeting the issue came up about the potential revisiting the site plan of record. Mr. Medlin stated he simply made a comment during that meeting that in fact since the

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site plan had been approved [the zoning had been approved] and legally it is vested under the eyes of the law and as such the applicant in this case potentially has some legal rights to seek redress if they were denied their rights to develop under their prior approval.

Mayor Bell asked if that consideration entered into the staff's recommendation on this [that there might be a potential lawsuit].

City/County Planning Director Steve Medlin stated in terms of an annexation, no sir.

For clarification, Council Member Woodard stated the recommendation actually comes from Ms. Johnson's department.

Budget Director Bertha Johnson replied yes that is correct. Ms. Johnson stated she does not recall any conversations about any legal matters and tonight it is the first time she has heard it.

Council Member Woodard stated as Chair of the Joint City/County Planning Committee he will be adding to the next agenda for September an item to discuss development in East Durham potentially between the 98 and 70 corridors [Leesville Road and through that area] and a comprehensive look at development in South East Durham.

Referencing Ms. Motley-Pearson's comments about an environmental assessment, Council Member Brown read a statement from a report dated June 7, 2007 from the Center for Watershed Protection out of Maryland.

MOTION by Council Member Clement seconded by Council Member Brown to receive citizens' comments concerning the voluntary annexation of the Doc Nichols Property.

To adopt "An Ordinance Annexing to the City of Durham" the Voluntary Annexation Area "Doc Nichols" in accordance with N.C. General Statutes 160A-58 effective from and after September 30, 2008; and

To authorize the City Manager to enter into a half base contract with Bethesda Volunteer Fire Department was approved at 7:51 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13675

**SUBJECT: PROPOSED MINIMUM NONRESIDENTIAL BUILDING CODE AND
RECENT MODIFICATIONS OF MINIMUM HOUSING CODE**

To receive public comments on the proposed Minimum Nonresidential Building Code and the recent amendments to the Minimum Housing Code;

To adopt the New Minimum Nonresidential Building Code; and

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To readopt the amendments to the Minimum Housing Code.

Constance Stancil, Director of Neighborhood Improvement Services, stated they are requesting the City Council conduct a public hearing to receive comments on the proposed nonresidential building code and recent amendments to the minimum housing code, and readopt the amendments to the minimum housing code.

Mayor Bell opened the public hearing.

Bill Kalkhoff, representing Downtown Durham Inc., spoke in support of the proposed ordinance and thanked the city staff for the time spent with him and Ted Conner of the Chamber to discuss some of the issues they had. He also stated they understood the process that would follow this meeting including city staff attending a conference to learn more about this type of ordinance from other communities. Also, Mr. Kalkhoff commented on the following: 1) working with Downtown Durham Inc. in the downtown area; 2) interior space requirements, and 3) building facade and windows.

Ted Conner, representing the Greater Durham Chamber of Commerce, stated the proposed nonresidential building code ordinance will result in improving areas in Durham where vacant buildings are not being maintained. Mr. Conner stated he did not want to see the city have the power to order interior improvements until it is known what the users will need in the facility. He spoke on the upkeep of the exterior of buildings and them being weather tight. He stated with buildings that are vacant they should be boarded up in a fashion that is attractive in preventing future damage.

Mayor Bell closed the public hearing.

Constance Stancil stated her staff is preparing to attend a workshop on September 8th pertaining to the nonresidential statute that was just passed in August 2007. She stated other cities will also be in attendance that have proposed ordinances.

Mayor Bell asked Ms. Stancil what was the expected date for the proposed minimum nonresidential building code to come back before the council.

Constance Stancil replied the second cycle in September.

Council Member Brown asked the staff if they have vetted any of this with commercial real estate brokers.

Constance Stancil stated she did send a copy of the draft ordinance to the realtors' association as well as a copy of the memorandum.

Council Member Brown stated he felt it was important to reach out to that community. Mr. Brown commented on the Temporary Quarters Building located across from the Police Department being an embarrassment to the City of Durham.

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Constance Stancil asked that the council take action tonight to readopt the amendments to the minimum housing code.

MOTION by Council Member Woodard seconded by Council Member Catotti to receive public comments on the proposed Minimum Nonresidential Building Code and the recent amendments to the Minimum Housing Code; and

To readopt the amendments to the Minimum Housing Code was approved at 8:02 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13676, 13677; 13678 and 13679

**SUBJECT: TRANSPORTATION SPECIAL USE PERMIT – KESTREL HEIGHTS
CHARTER SCHOOL (T07-01) 4700 SOUTH ALSTON AVENUE**

To hold a quasi-judicial public hearing to consider a Transportation Special Use Permit for a development proposed to generate over 600 peak hour trips; and

To direct the Planning Director to prepare an Order for adoption, for 1) approval, 2) approval with conditions or 3) denial, or to continue the hearing to a specified later meeting. (A draft order for approval with staff recommended conditions will be available at the meeting)

City Clerk Gray swore in the following individuals: Mike Stock; Steve Medlin; Wesley Parham; Ron Horvath; Steven Green and Phil Atkins.

Mayor Bell asked if any council member(s) needed to withdraw from the hearing due to a conflict that would prevent them from deciding this case in a fair and impartial manner.

None of the council members indicated conflict.

Mayor Bell asked if any council member(s) heard information about this case other than what may have been presented at the work session.

None of the council members acknowledged hearing information about this case other than what was presented at the work session.

Mayor Bell informed all parties involved of the proceedings for this case.

Mayor Bell opened the hearing.

Testimony from City Staff

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Mike Stock, of the City/County Planning Department, stated staff requests that the staff report and all attachments and exhibits be entered as a part of the permanent record. It should also be noted that all required mail and newspaper notification, along with required posting on the subject site has taken place.

Mike Stock gave the following report:

Horvath Associates, PA on behalf of Imagine Schools, requests approval of a transportation special use permit (TSUP) for traffic impacts associated with an approved Site Plan for an expansion of the existing Kestrel Heights Charter School. Unless exempted by Section 3.3.8.B, a transportation special use permit is required for site plan projects that generate at least 600 vehicle trips in a single peak hour. This proposed project, consisting of multiple phases, crosses this threshold, generating an estimated 746 AM peak hour trips at full build-out.

A Traffic Impact Analysis (TIA) was prepared by the applicant's traffic consultant, Ramey Kemp & Associates. The TIA was reviewed by both the City's Transportation Division and the North Carolina Department of Transportation (NCDOT). The findings are provided in the attached memos. The applicant has agreed to the roadway improvements necessary to mitigate the project's impacts, which are identified as Special Conditions of Approval on the approved Site Plan and within the attached TIA memos. The staff further recommends these improvements be included as conditions if City Council were to approve the request.

As a reminder, the City Council must make findings of fact under Section 3.3.8D of the Unified Development Ordinance, as specifically identified within the staff report.

Staff from the city Transportation Division is available to answer questions.

Staff will provide a recommendation to the Council at the conclusion of testimony for this case.

Mayor Bell asked if there were questions of the city staff.

There were no questions.

Testimony from the Applicant

Ron Horvath, representing Kestrel Heights, asked that the TIA be submitted as evidence as well as the letter from NCDOT. Mr. Horvath stated a short presentation will be presented on how they complied with Section 3.3.8D, the criteria for the transportation special use permit.

Steven Green, representing Ramey Kemp & Associates, stated in response to the Section 3.3.8D [the traffic impact analysis report dated November 2005] traffic generated by the proposed Kestrel Heights Charter School will not have a significant adverse impact on the area surrounding the site. He stated roadway and traffic signal improvements that will be constructed will mitigate site traffic impacts and improve existing operations. Mr. Green stated traffic impacts to local residential streets are expected to be minimum and not significant. In relations to adequate parking provisions, he stated adequate provisions have been made for safe and

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efficient vehicular circulation, parking and loading and pedestrian access [each meets the standards of the UDO] and in the case of parking they exceed the standards of the UDO. Mr. Green stated the traffic impacts generated by the proposed development will be offset by the proposed road improvements encompassed under the approved site plan. He stated the roadway improvements will serve to reduce trip duration and idling times in the study area and thereby minimize pollution impact of increased traffic. He stated areas in the immediate vicinity of the improvements will only experience typical levels of noise and vibration associated with normal construction. Mr. Green stated the Traffic Impact Analysis that was prepared to determine the impacts of the surrounding roadway system was prepared in accordance with the City of Durham and NCDOT guidelines and has been reviewed by city staff and NCDOT. He stated the City and/or NCDOT both require roadway and signal improvements that will be constructed and are expected to mitigate the site traffic impacts and address existing transportation needs at each study intersection.

Mayor Bell asked if there were questions from the council.

There were no questions from the council.

Mayor Bell asked if there were any opponents present wanting to speak.

It was noted no one wanted to speak in opposition to this item.

Mayor Bell closed the hearing and asked for the staff recommendation.

Staff Recommendation

Mike Stock stated the staff recommended approval subject to the following conditions:

The project shall be substantially consistent with the site plan and Traffic Impact Analysis presented to the Council as part of the application.

The road improvements indicated as special conditions of the site plan and indicated below are completed prior to the issuance of any certificate of occupancy within the appropriate phase. These road improvements are:

Summary of Required Improvements for Phase IA

Englert Drive / Alston Avenue (unsignalized)

1. Construct a northbound left-turn lane on Alston Avenue with adequate storage and appropriate tapers. Due to the close proximity of this intersection to Triangle Drive, this proposed left-turn lane must be constructed as part of a two way left-turn lane between the two intersections; **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**

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2. Construct an exclusive southbound right-turn lane on Alston Avenue with approximately 200 feet of storage and appropriate tapers. **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**

Triangle Drive / Alston Avenue (unsignalized)

1. Construct a southbound left-turn lane on Alston Avenue with adequate storage and appropriate tapers. Due to the close proximity of this intersection to Englert Drive, this proposed left-turn lane must be constructed as part of a two way left-turn lane between the two intersections. **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**

Sedwick Road / Prospectus Drive (unsignalized)

1. Construct an exclusive eastbound left-turn lane on Sedwick Road at Prospectus Drive with approximately 100 feet of storage and appropriate tapers. **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**

Summary of TIA Required Improvements for Phase II

NC 54 / Alston Avenue

1. Construct an exclusive eastbound right-turn lane on NC 54 at Alston Avenue with approximately 200 feet of storage and appropriate tapers; **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**
2. Install an overlap right-turn phase for the eastbound right-turn with the northbound left-turn phase.
3. Install protected + permitted left-turn phasing on southbound Alston Avenue.

Englert Drive / Alston Avenue (unsignalized)

1. Construct exclusive eastbound right on Englert Drive at Alston Avenue with approximately 100 feet of storage and appropriate tapers. **(Note this proposed improvement may require the acquisition of off-site right-of-way which is not part of this development, and which shall be acquired at no expense to the City.)**

MOTION by Council Member Clement seconded by Council Member Woodard to adopt an order, granting upon certain conditions, a Transportation Special Use Permit [Kestrel Heights Charter School] was approved at 8:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13680

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SUBJECT: INITIAL ZONING MAP CHANGE – RAVENSTONE PHASE 3 INITIAL (Z06-62A) WESTSIDE OF ENGLISH IVY DRIVE AND EAST OF HIDDENBROOK DRIVE

To receive public comments on the initial zoning map change for Ravenstone Phase 3 Initial (Z06-62A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Suburban – 10 with a development plan (RS-10(D)); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the west side of English Ivy Drive and east of Hiddenbrook Drive PINs 0860-01-15-1405, -16-2188]

City/County Planning Director Steve Medlin stated that all proper notification has been carried out in accordance with the General Statutes and the Unified Development Ordinance provisions. He noted copies of the affidavits have been completed and are in the case file for review. He stated the requested is an initial zoning request for approximately 59.281 acres. He noted council approved the annexation which was effective on June 30, 2008 and staff is recommending approval of this request.

Mayor Bell opened the public hearing.

Proponent

Ron Horvath, of Horvath of Associates, stated with this case they have been through a number of public hearings with the county on the zoning, site plan approval, construction drawing approval and utility permits have been issued. He said part of the extension agreement requires them to file for voluntary annexation which they have done. Mr. Horvath asked the council to approve this item.

Opponent

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Tina Motley-Pearson spoke on Jordan Lake being impaired as well as Falls Lake. Ms. Motley-Pearson shared a picture with council of water runoff at Ravenstone and the buffers not being as good as they should be. She spoke on violations issued at Ravenstone and DWQ and the Army Corps of Engineers not doing environmental assessments. She stated she would like for the property to be downzoned. Ms. Motley stated the stream buffers needed to be bigger and less impervious surface and no buydowns.

Ron Horvath spoke on the violations issued in May 2008 and stated they were ratified within 24 to 48 hours and they are working with DWQ to do a stream restoration because they followed the city standards on installing some stormwater devices without telling DWQ about this.

Mayor Bell closed the public hearing.

MOTION by Council Member Clement seconded by Council Member Woodard to receive public comments on the initial zoning map change for Ravenstone Phase 3 Initial (Z06-62A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Suburban – 10 with a development plan (RS-10(D)); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13681

**SUBJECT: INITIAL ZONING MAP CHANGE – DUKE SCHOOL INITIAL
(Z0800017A) NORTH SIDE OF ERWIN ROAD AND WEST OF NC 751
DRIVE**

To receive public comments on the initial zoning map change for Duke School Initial (Z0800017A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Rural (RR) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

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Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the north side of Erwin Road and west of NC 751 Drive PIN 0801-01-99-5059]

City/County Planning Director Steve Medlin stated all proper notifications in accordance with the General Statutes and the Unified Development Ordinance have been carried out. He noted affidavits have been executed and are a part of the case file for review. He stated the request is for approximately 39.923 acres which is a newly annexed area in the city which became effective June 30, 2008. Mr. Medlin stated staff recommends approval of this initial rezoning.

Mayor Pro Tempore Cole-McFadden asked if there were any questions from council.

Mayor Pro Tempore Cole-McFadden closed the public hearing.

MOTION by Council Member Woodard seconded by Council Member Brown to receive public comments on the initial zoning map change for Duke School Initial (Z0800017A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Rural (RR) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13682

**SUBJECT: INITIAL ZONING MAP CHANGE – CURRIN OAKS INITIAL (Z0800018A)
EAST SIDE OF STALLINGS ROAD AND NORTH OF OAK GROVE
PARKWAY**

To receive public comments on the initial zoning map change for Currin Oaks Initial (Z0800018A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Rural (RR) and Planned Development

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Residential 1.630 (PDR 1.630); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the east side of Stallings Road and north of Oak Grove Parkway PINs 0861-03-02-4736, -5630, -5571, -6412, -6362, -7190, -7211, -03-3063]

City/County Planning Director Steve Medlin stated all proper notification has been carried out in accordance with the General Statutes requirements and the Unified Development Ordinance and affidavits have been completed and are in the case file for review. He stated this is an initial zoning of approximately 11.45 acres newly annexed into the city and staff recommended approval of this request. He noted the annexation was effective June 30, 2008.

Mayor Bell opened the public hearing.

There being no one to speak in support or against this item, Mayor Bell closed the hearing.

MOTION by Council Member Clement seconded by Council Member Brown to receive public comments on the initial zoning map change for Currin Oaks Initial (Z0800018A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Rural (RR) and Planned Development Residential 1.630 (PDR 1.630); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:26 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13683

SUBJECT: INITIAL ZONING MAP CHANGE – BIGGERSTAFF & CRAWLEY

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**INITIAL (Z0800023A) WEST SIDE OF SOUTH MIAMI BOULEVARD AND
EAST OF ANGIER AVENUE**

To receive public comments on the initial zoning map change for Biggerstaff & Crawley Initial (Z0800023A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Commercial General (CG) and Residential Suburban – 20 (RS-20); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, even though the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the west side of South Miami Boulevard and east of Angier Avenue PINs 0840-04-62-8419, -8339]

City/County Planning Director Steve Medlin stated proper notification has been carried out with the appropriate provisions of the General Statutes and Unified Development Ordinance and that affidavits have been completed and are part of the case file for review. He stated this is the initial zoning of a 3.03 acre tract located on the west side of South Miami Boulevard and east of Angier Avenue. He stated the annexation was approved by council effective June 30, 2008 and staff was recommending approving of this request.

Mayor Bell opened the public hearing.

There being no one to speak in favor or against this request, Mayor Bell closed the hearing.

MOTION by Council Member Clement seconded by Council Member Woodard to receive public comments on the initial zoning map change for Biggerstaff & Crawley Initial (Z0800023A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Commercial General (CG) and Residential Suburban – 20 (RS-20); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

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To adopt as support for its action on the proposed zoning map change the determinations that, even though the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13684

**SUBJECT: INITIAL ZONING MAP CHANGE – CRUZ PROPERTY INITIAL
(Z0800019A) NORTH SIDE OF PLEASANT DRIVE AND WEST OF SOUTH
MINERAL SPRINGS ROAD**

To receive public comments on the initial zoning map change for Cruz Property Initial (Z0800019A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Suburban – 20 (RS-20); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, although the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on annexation by the Council and the information contained in this report.

Planning Commission Recommendation: Approval, per the resolution adopted by the Commission on December 13, 2005 and attached to the staff report.

[The site is located on the north side of Pleasant Drive and west of South Mineral Springs Road PIN 0840-02-87-5733]

City/County Planning Director Steve Medlin stated all proper notification has been done in accordance with the General Statutes and the Unified Development Ordinance provisions and that affidavits have been prepared they are part of the case record for review. He noted this is a request for an initial zoning of 4.436 acres located north of Pleasant Drive and west of South of Mineral Springs Road. He stated the council approved the annexation effective June 30, 2008 and the staff was recommending approval.

Mayor Bell opened the public hearing.

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There being no one present to speak in favor or against this item, Mayor Bell closed the public hearing.

MOTION by Council Member Clement seconded by Council Member Brown to receive public comments on the initial zoning map change for Cruz Property Initial (Z0800019A);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish Residential Suburban – 20 (RS-20); Falls/Jordan B Watershed Overlay (F/J-B) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, although the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13685

**SUBJECT: ZONING MAP CHANGE – LMHT BUILDING EXPANSION (Z0800008)
SOUTH SIDE OF CARPENTER FLETCHER ROAD, WEST OF NORTH
BEND DRIVE AND NORTH OF MERIDIAN PARKWAY**

To receive public comments on the zoning map change for LMHT Building Expansion (Z0800008);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z0800008 out of RS-10 and IL; F/J-B (partial) and placing same in and establishing same as OI(D); F/J-B (partial); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on consistency with the Comprehensive Plan, and considering the information contained in this report.

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Planning Commission Recommendation and Vote: Approval, 10-2 on June 10, 2008. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing and additional committed elements proffered by the applicant at the meeting.

[The site is located on the south side of Carpenter Fletcher Road, west of North Bend Drive and north of Meridian Parkway. PINs: 0728-02-98-4941, -6009]

City/County Planning Director Steve Medlin stated the proper notification has been done in accordance with the General Statutes requirements and the Unified Development Ordinance and affidavits have been prepared and are part of the case file for review. He noted the zoning map change before council is a request from Commercial Site Design for the LMHT Building Expansion and the site is located on the south side of Carpenter Fletcher Road west of North Bend Drive and Meridian Parkway. He referenced the request is to rezone from RS-10 and industrial light to office institutional with a development plan. He stated the property is designated as office on the future land use map of the Durham Comprehensive Plan and it is in compliance with that. Mr. Medlin stated the plan has four committed elements proposed by the applicant including the dedication of 15 foot of right-of-way on Carpenter Fletcher Road. He stated staff is recommending approval of this request as did the Planning Commission.

Mayor Bell opened the public hearing.

There being no one present to speak in favor or against this request, the public hearing was closed by Mayor Bell.

MOTION by Council Member Clement seconded by Council Member Woodard to receive public comments on the zoning map change for LMHT Building Expansion (Z0800008);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z0800008 out of RS-10 and IL; F/J-B (partial) and placing same in and establishing same as OI(D); F/J-B (partial); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Ordinance #13686

SUBJECT: NINTH STREET PLAN

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To receive public comments on the Ninth Street Plan; and

To adopt the Ninth Street Plan.

Aaron Cain, of the City/County Planning Department gave a power point presentation on the Ninth Street Plan highlighting the following:

Existing Ninth Street Compact Neighborhood

Purpose

- ☐ Durham Comprehensive Plan
 - Policy 2.3.4h, Station Area Plans
 - Policy 4.5.1a, Compact Neighborhood Plans
- ☐ Plan goals
 - Create a vision for the Compact Neighborhood
 - Install policies that are transit-supportive
 - Respect the character and surrounding neighborhoods
- ☐ Plan provides a “road map” for future actions

Public Input

- ☐ Charrette in September 2006
- ☐ Two Follow-up Community Meetings
 - November 2006
 - March 2007
- ☐ Stakeholder Interviews Fall 2007
- ☐ Community Open House January 2008
- ☐ Planning Commission Hearing June 2008

Draft Plan

- ☐ Five recommendations
 - Comprehensive Plan amendments
 - Use of a hybrid form-based code
 - Transportation recommendations
 - Street re-design
 - Parking recommendations

Comprehensive Plan Amendments

- ☐ Change boundaries of the Ninth Street Compact Neighborhood
- ☐ Change Future Land Use designation for certain parcels
- ☐ Create a new Future Land Use designation – Design District
- ☐ Permit High Density Residential in support areas of Compact Neighborhoods

Hybrid Form-Based Code

- ☐ New zoning district would focus on
 - Height

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- Massing
- Building location and orientation
- Density and Intensity
 - Required minimum as well as maximum densities
 - Non-residential intensity not regulated
- Open Space
- Use would be regulated, but not a major focus

Transportation

- ☐ Re-route US 70 Business
- ☐ Pedestrian and bicycle improvements
- ☐ Explore improvements to existing transit service

Street Design

- ☐ Redesign Safeway Street/Hillsborough Road
- ☐ Adopt alternative street cross-sections for the Compact Neighborhood

Parking

- ☐ Reduce parking requirements in the Compact Neighborhood
 - Short-term and long-term options
- ☐ Expand on-street parking opportunities

Recommendation

- ☐ Staff recommends approval of the Plan
- ☐ Planning Commission recommended approval of the Plan at its June meeting

Mayor Bell opened the public hearing.

Aaron Cain, of the City/County Planning Department gave an explanation of the required minimum as well as maximum densities and provided a definition for massing.

Meredith Emmet, of 1301 Alabama Avenue/President of Watts-Hillandale Neighborhood Association, spoke in support of the Ninth Street Plan. She stated it is time to move the plan forward and urged Council to not support a deferral.

Tom Miller, representing the Watts-Hillandale Neighborhood Association, urged Council to move the plan forward and adopt it tonight. He made comments on the neighborhood's involvement during this process and stated this plan would permit the densest housing in the City of Durham, protecting that portion of Ninth Street. He asked Council to vote to adopt the plan today because there is work to be done that is not over yet. He stated they are willing to work with any stakeholder to make sure that the best results possible are achieved. He felt that if the discussion is opened again nobody would get anywhere. Mr. Miller stated there are big projects on the table that need to be governed by a new Ninth Street Plan and not by zoning regulations that govern the area today.

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Terry Sanford, Jr., of 5000 Old Oxford Highway, asked Council to postpone the proposed Ninth Street Plan expressing concern with the property values that would be cut in half. He stated this plan means a loss of 40 to 60 percent of development potential, represents an inability for the community to sit down and figure out how to provide parking, and it removes the most potential for real answers that we need to ask for inner-city density so that we can get out of cars get on a transit system and start to provide an answer to an energy crisis that is only going to get worst. He stated we want to find options that all can embrace, but it has to be a plan that addresses the largest problem in the area with regard to parking and it cannot be a plan that does no more than down-zone a few large properties.

George Stanziale, representing SEHED/Ninth Street, stated these two entities own nearly 60% of the total area in the proposed Ninth Street District, made comments on the meetings that have been held to develop a plan that is fair and equitable to land owners or to preserve the history and vitality of Ninth Street retail and to support transit--Station 9 of the TTA system in the Ninth Street area. He raised a concern about the issue of parking. He outlined the following reasons why they don't support the current version of the plan: densities and building heights are too low that equals less people, inadequate parking to support retail and other uses currently provided by private owned people, and significant decreases in height and density resulting in significant loss of land value to current owners. He also expressed concerns with the Ninth Street Plan relative to the core area, who would be responsible for paying for the parking decks, and open space. He urged Council to defer this item so these items can be worked out in the plan prior to going on to the details in the actual ordinance.

Denise Hester, of 3536 Abercromby Drive/Fayetteville Street Planning Group, made comments on the process and mentioned the TTA Final Environmental Study that references the U. S. Department of Transportation Study which addresses the inadequacies of Ninth Street and others streets in downtown if there were to be higher intensity development around the rail. She stated it has been unfair that the Fayetteville Street Plan that was submitted August 15, 2005 has become languished and urged Council to give all the neighborhoods the same consideration and expeditious treatment that Ninth Street has received.

Mayor Bell closed the public hearing.

In response to a question raised by Mayor Bell regarding the 60-day deferral, George Stanziale noted if there are changes to be made to the plan--this would be a workable schedule to allow staff more time to get this item back on the agenda.

Mayor Bell asked Mr. Stanziale if there are any projects planned for this area during the next 60 days under the present zoning.

George Stanziale replied they have re-submitted a rezoning for the area directly across the street from Ninth Street North. It would be zoned to mixed use to include a retail, an internal parking deck and four/five stories of residential.

Mayor Bell asked staff if this proposed plan by the applicant is approved, what would be the impact on the Ninth Street Plan.

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Aaron Cain, of the City/County Planning Department, stated this plan would be allowed without a rezoning requirement under this proposed plan.

Regarding additional items planned for the area, George Stanziale reported a site plan has been submitted for a six-story hotel adjacent to the current tower.

Aaron Cain, of the City/County Planning Department, stated this hotel would be allowed under the proposed plan.

Mayor Bell asked staff are there pending plans for the remaining 40% of the property that might change within 60 days.

Aaron Cain, of the City/County Planning Department, replied no.

For clarification, Mayor Bell asked staff in terms of the 60% property owners whether we went with the proposed zoning change or whether we went with what's existing, they still could do what they intended to do with the present zoning.

Aaron Cain, of the City/County Planning Department, replied that's correct.

Council held discussion on whether a special use permit would be required for projects planned by property owners.

Council Member Ali asked Mr. Miller how the neighborhood would feel about negotiating this issue out further.

Tom Miller, representing Watts-Hillandale Neighborhood Association, stated he could not answer the question because he does not know what they are proposing and pointed out there are significant impediments on the ground with the current zoning. Also, he stated they would be against moving away from the middle ground that they have established. He made comments in support of the parking issue in the proposed plan.

George Stanziale made comments on the issue of downzoning in the proposed plan and made comments on the issue of parking.

Council held discussion on the issues of downzoning and parking.

Aaron Cain made comments on the issue of shared parking.

Council Member Brown stated he was perplexed since this issue has been discussed for two years, and the two parties have not reached a compromise.

Council Member Brown asked Mr. Stanziale where do you see any additional compromise and what will the additional time gain as a result of deferring this item.

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George Stanziale made comments on the meetings held with the public and Planning Department and indicated to Mr. Cain of the Planning staff that they don't approve of this plan because it is not there yet. He stated if they are granted the time to sit down with Mr. Miller and others, the focus would be on the core area—where density and intensity is currently allowed and parking.

Council Member Woodard asked proponents and opponents to address issues raised by Mr. Cain.

Tom Miller noted they are satisfied with half of the plan so let's move on and go to the next level of negotiations. He urged Council to adopt the plan and move on to next phase of development.

Terry Sanford, Jr. stated this is not a requested rezoning, but a change and a plan that will convert into a zoning change. He made comments on the years and the money spent in the Ninth Street area. He stated they would like to move forward and create something that is nice for the community, Ninth Street and North Carolina.

Council Member Woodard made comments on the discussion he had with Tom Campbell of the Regulator Bookshop. He noted issues raised by Mr. Campbell will be addressed when they move forward with the text amendments to the UDO.

Council Member Catotti made comments in support of moving forward with the Ninth Street Plan.

Mayor Bell outlined why he supports the 60-day deferral to allow the parties to come together to work out a compromise.

A motion was made by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to defer this item for 60 days.

Council Member Woodard made a friendly amendment to continue the public hearing on this item for 60-days. The friendly amendment was accepted.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to continue the public hearing on this item for 60 days was approved at 9:49 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT –
CONSERVATION SUBDIVISIONS (TC07-19)**

To receive public comments on the Unified Development Ordinance (UDO) Text Change – Conservation Subdivisions (TC07-19); and

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, incorporating revisions to Article 3, Applications and Permits,

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Article 6, District Intensity Standards, Article 7, Design Standards, and Article 8, Environmental Protection.

Note: The City Manager requested that this item be referred back to the administration – City- County Planning Department.

[SUPPLEMENTAL ITEMS]

SUBJECT: THE ENVIRONMENTAL AFFAIRS BOARD’S REPORT ON THE PROPOSED NATIONAL BIO-AND AGRO- DEFENSE FACILITY

To receive the Durham Environmental Affairs Board (EAB) Report on the proposed National Bio and Agro-Defense Facility (NBAF).

Mayor Bell stated when this item came before the Council, Council asked the Environmental Affairs Board to review this issue and come back with a specific recommendation. He noted the discussion on this item will be limited and that this is not a public hearing, but an item for Council to receive a report and to decide how to move forward.

Joyce Martin, representing the Environmental Affairs Board, provided background information on this item stating the Department of Homeland Security is proposing to place a major National Bio and Agro Defense Facility in one of six areas and the one area of concern is in Granville County. She made comments on the Environmental Affairs Board’s review of the Draft Environmental Impact Statement. She reported this facility would deal with some contagious animal diseases and some that jump from animals to humans. She noted they looked at the impacts on the air, water, human health, and visual impacts, social, economic and environmental justice. She stated the problem with the report provided by the Homeland Security is that portions are vague, imprecise and not detailed enough which is their major finding. She reported they looked at the risk of pathogen releases which are very serious diseases and if they are released--it would take a great deal of resources to handle any kind of a release. Ms. Martin stated the Department of Homeland Security has assured everyone that the facility would be very well built, but there is a possibility of error and failure. She mentioned other concerns raised by the Board include hazardous waste disposal, water consumption/water quality issue and air quality. Finally, she stated the Department of Homeland Security doesn’t provide good long term commitments for the maintenance and de-commissioning of the facility. She made comments on the handout provided by the Board. She stated the EAB has provided Council with a letter that could be sent to the Department of Homeland Security with the comments in Attachment B and informed Council that the public comment period ends on August 25, and the Final Environmental Impact Statement will be released in November, but that does not have a public comment period. She stated the Board did not offer a recommendation to support or oppose it, but provided environmental impacts and input. Since there are many things that concerned the Environmental Affairs Board in this report, she urged the elected officials to share their concerns and comments before August 25th.

Council Member Woodard thanked the subcommittee for their work on this issue.

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Joyce Martin, representing the Environmental Affairs Board, informed Council that the comments from the public hearing on August 6 are provided in Attachment C.

Mayor Bell stated he was looking for a specific recommendation from the Environmental Affairs Board. He asked Ms. Martin if they would support this lab.

Joyce Martin, representing the Environmental Affairs Board, stated the purpose is good, but the question is where it should be located. She stated there isn't anyone on the Board that would suggest this is the right location.

Given the environmental risk, the positive attributes of a lab, Mayor Bell asked Ms. Martin why EAB did not make a recommendation.

After discussion, Joyce Martin stated the Board was asked to provide a report and their advice on the environmental consequences of this facility.

Regarding page 4 in the report, Council Member Clement made comments on the EAB recommendation that the Council and Commissioners defer making a decision regarding support of or opposition to the NBAF until additional information is available to help quantify the impact to the environment in the three major areas listed in this report. Also, he asked if the facility was going to Mississippi.

Joyce Martin, representing EAB, replied she did not know.

Council Member Clement stated he does not feel comfortable in making a decision tonight.

Senator Doug Berger addressed the Council outlining why he supported the Butner site in the beginning. He informed Council that he withdrew his support from the project due to the lack of response from the U. S. Department of Homeland Security regarding certain questions. He urged Council to oppose this project.

A motion was made by Mayor Pro Tempore Cole seconded by Council Member Woodard to oppose locating this facility in Butner.

Council Member Woodard stated he does not have enough information to support this facility since Council and others have not received answers from the Department of Homeland Security.

Council Member Catotti made a friendly amendment to accept the report and forward comments as drafted in addition to the resolution opposing the proposed facility. The friendly amendment was accepted.

Council Member Brown stated he was not prepared this evening to vote yes or no. He stated he was prepared to accept the report.

For clarification on the friendly amendment, Council Member Catotti stated the motion would be to accept the report as presented by the Environmental Affairs Board, forward comments as

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drafted on page 2 of 27 -- draft letter, questions and outstanding concerns and send a resolution opposing the proposed facility.

Council Member Clement stated he could not support or oppose this item because he does not have enough information.

For clarification on attachments, a member of the EAB pointed out the initial recommendation to defer judgment was recapping their original letter of March which asked Council to defer until the Draft Environmental Impact statement came out so that EAB could have the opportunity to see if those questions were answered in the EIS and our response is, they have not been answered satisfactorily. She reported there are two stages--- initial recommendation referred to where we were in March and now there is a recommendation that Council respond to the draft EIS that reflects our concerns.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive the Durham Environmental Affairs Board (EAB) Report on the proposed National Bio and Agro-Defense Facility (NBAF); and

To forward the letter and comments as drafted by the Durham Environmental Affairs Board to the U. S. Department of Homeland Security; and

To send a resolution, on behalf of the Durham City Council, opposing the proposed National Bio-and Agro-Defense Facility locating at the Umstead Research Farm in Granville County was approved at 10:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Catotti and Woodard. Noes: Council Member Brown. Abstention: Council Member Clement. Absent: None.

Note: Later in the meeting, City Attorney Baker read the text that would not allow Council Member Clement to abstain from voting on this item.

Mayor Bell asked the City Clerk to record the vote of Council Member Clement in the affirmative.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive the Durham Environmental Affairs Board (EAB) Report on the proposed National Bio and Agro-Defense Facility (NBAF); and

To forward the letter and comments as drafted by the Durham Environmental Affairs Board to the U. S. Department of Homeland Security; and

To send a resolution, on behalf of the Durham City Council, opposing the proposed National Bio-and Agro-Defense Facility locating at the Umstead Research Farm in Granville County was approved at 10:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Catotti, Clement and Woodard. Noes: Council Member Brown. Absent: None.

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SUBJECT: RESOLUTION SUPPORTING THE DURHAM COUNTY BOARD OF COMMISSIONERS IN CALLING AN ADVISORY REFERENDUM TO IMPOSE A LOCAL PREPARED FOOD TAX

Karmisha Wallace made comments on this item and provided Council with a revised handout [First issuance August 11, 2008] that reflected no changes in the dollar amount or year. Also, she summarized the projects that would be supported with the revenue from the prepared food tax.

MOTION by Council Member Clement seconded by Council Member Woodard to adopt a Resolution Supporting the Durham County Board of Commissioners in Calling an Advisory Referendum to Impose a Local Prepared Food Tax was approved at 10:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Resolution #9598

There being no further business to come before the City Council, the meeting was adjourned at 10:35 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, MMC
City Clerk